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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.         | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------------|------------------|
| 09/942,334   | 08/28/2001  | Y. Denis Yerlikaya   | 20518/14                    | 7702             |
| 7590   | 09/10/2004  |                      |                             |                  |
| Mark S. Leonardo, Esq.<br>Brown Rudnick Freed & Gesmer, P.C.<br>One Financial Center<br>Boston, MA 02111 |             |                      | EXAMINER<br>JAGAN, MIRELLYS |                  |
|  |             |                      | ART UNIT<br>2859            | PAPER NUMBER     |

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/942,334

Applicant(s)

YERLIKAYA ET AL.

Examiner

Mirellys Jagan

Art Unit

2859

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-28.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
Diego GutierrezSupervisory Patent Examiner  
Technology Center 2800

Continuation of 3. Applicant's reply has overcome the following rejection(s): The Affidavit filed on 8/20/04 under 37 CFR 1.131 is sufficient to overcome the rejection of claims 1-28 under 102(e) over the Babkes reference.

Continuation of 5. does NOT place the application in condition for allowance because: the Affidavit filed on 8/20/04 does not overcome the rejection of claims 1-28 under 103(a) over the prior art of record.

Applicant's arguments that Eberly does not teach or suggest the removable module of the present invention are not persuasive since the rejections are not based on replacing the removable module of McBean with the module of Eberly. The rejections are based on modifying the removable module of McBean by adding chambers to the module, as taught by Eberly.

Furthermore, in response to Applicant's arguments against the McBean and Eberly references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Therefore, Applicant's arguments that Eberly alone does not teach or suggest a removable module, and that McBean alone does not teach or suggest a temperature probe storage chamber or a temperature cover storage chamber are not persuasive.

Applicant's arguments that it is not logical to modify Eberly with McBean are not persuasive since the rejections are not based on Eberly in view of McBean. The rejections are based on McBean in view of Eberly.

Applicant's arguments that the Examiner's motivation for combining Eberly and McBean, i.e., to avoid cross-contamination, is improper are not persuasive since avoiding cross-contamination was not used by the Examiner as a motivation in rejecting the claims over McBean in view of Eberly.